

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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IN RE PHARMACEUTICAL INDUSTRY )	MDL No. 1456
AVERAGE WHOLESALE PRICE )	Master File No. 01-12257-PBS
LITIGATION )	(Original Central District of California
)	No. 03-CV-2238)
THIS DOCUMENT RELATES TO: )	Judge Patti B. Saris
State of California, <i>ex rel.</i> Ven-A-Care v. )	
Abbott Laboratories, Inc., <i>et al.</i> )	
CASE #: 1:03-cv-11226-PBS )	
)	

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**DEFENDANTS' MOTION TO DISMISS**  
**PLAINTIFFS' FIRST AMENDED COMPLAINT-IN-INTERVENTION**

Pursuant to Fed. R. Civ. P. 9(b) and 12(b)(6), the Defendants listed below respectfully move this Court jointly for dismissal of all claims against them in Plaintiffs' First Amended Complaint-In-Intervention. The grounds for this motion are stated in: (1) the Defendants' Memorandum of Law in Support of Their Motion to Dismiss the First Amended Complaint, in which all listed defendants join; and (2) the individual memoranda of law filed by some defendants, which they have submitted to address issues specific to them or issues that were not included in the Defendants' Memorandum of Law in Support of Their Motion to Dismiss the First Amended Complaint.

WHEREFORE, for the reasons set forth in the memoranda described above, the Defendants respectfully request that the Court grant their motion to dismiss the claims against them in the Plaintiffs' First Amended Complaint-In-Intervention and enter an order:

- a. dismissing all claims in the Plaintiffs' First Amended Complaint-In-Intervention with prejudice; and
- b. providing such other and further relief as the Court deems just and proper.

Dated: January 17, 2006

SUBMITTED ON BEHALF OF ALL LISTED  
DEFENDANTS BY:

/s/ Toni-Ann Citera

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**Abbott Laboratories Inc.**  
**Armour Pharmaceutical Co.**  
**Aventis Pharmaceuticals Inc.**  
**B. Braun Medical Inc.**  
**Baxter Healthcare Corp.**  
**Ben Venue Laboratories, Inc.**  
**Boehringer Ingelheim Corp.**  
**Bristol-Myers Squibb Company**  
**Dey, Inc.**  
**Dey, L.P.**  
**Immunex Corp.**  
**Mylan Laboratories Inc.**  
**Mylan Pharmaceuticals Inc.**  
**Roxane Laboratories, Inc.**  
**Sandoz Inc.**  
**Schering-Plough Corp.**  
**Warrick Pharmaceuticals Corp.**  
**ZLB Behring LLC (f/k/a Aventis Behring LLC)**

**REQUEST FOR ORAL ARGUMENT**

Pursuant to Local Rule 7.1(d), Defendants hereby request a hearing for oral argument on this motion to dismiss.

**CERTIFICATION PURSUANT TO LOCAL RULE 7.1**

I certify that the moving party has communicated with counsel for Plaintiffs in an effort to resolve the dispute referred to in this motion, and that the parties have not been able to reach agreement with respect thereto.

/s/ Tara A. Fumerton  
Tara A. Fumerton

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing was delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on January 17, 2006, a copy to Lexis-Nexis for posting and notification to all parties.

/s/ Tara A. Fumerton  
Tara A. Fumerton